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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH

Plaintiff-Respondent

vs.

THOMAS FRANKLIN ANDERSON

Defendant-Appellant

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark School of Law

Case No. 14020

BRIEF OF APPELLANT

Appeal from a jury verdict of guilty in Third Judicial District
Court, in and for Salt Lake County, State of Utah, the Honorable
Gordon Hall, Presiding.

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FILE
AUG 19 1975

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH

Plaintiff-Respondent

vs.

THOMAS FRANKLIN ANDERSON

Defendant -Appellant

Case No. _____

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, THOMAS FRANKLIN ANDERSON, appeals from a jury verdict of guilty.

DISPOSITION IN THE LOWER COURT

The appellant was tried before a jury by the Honorable Gordon Hall, Judge of the Third District Court on the 4th day of February, 1975 and was found guilty of the crime of forgery.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction.

STATEMENT OF THE FACTS

During the month of October, 1973, one Lottie Andreason failed to receive a check which customarily arrived each month from San Francisco.

The appellant lived in the same apartment building as Mrs. Andreason. The appellant testified that during the month of October, a girlfriend of his whom he knew as Laurie or Lottie Andreason asked him to go with her to cash a check. The check was the same one Mrs. Andreason did not receive in the mail. Appellant Anderson testified that they tried to cash the check at a couple of stores and were refused because it was a two party, out of state check. Thomas Anderson then told his friend that he would take the check to his credit union and cash it. The check was for \$173.00. Appellant endorsed the check in his own name and deposited \$75.00 in his account and received \$98.00 in cash. He gave this to his girlfriend and made up the difference from money in his pocket. It subsequently was discovered that the check had not been that of his girlfriend but belonged to Mrs. Andreason.

A R G U M E N T

Point I

APPELLANT IS ENTITLED TO A REVERSAL OF THE CONVICTION BECAUSE THE EVIDENCE WAS NOT SUFFICIENT TO SUPPORT THE VERDICT.

Appellant contends that the evidence was insufficient to support the verdict and so under Utah Rule of Civil Procedure, Rule 76(A) he is entitled to a reversal of the conviction.

In State v. Mills, 122 Utah 306, P. 2d 211 (1952) this court stated, 249 P. 2d at 212:

If the State's evidence is so 'inherently improbable' as to be unworthy of belief, so that upon objective analysis it appears that reasonable minds could not believe beyond a reasonable doubt that the defendant was guilty, the jury's verdict cannot stand. Conversely, if the State's evidence is such that reasonable minds could believe beyond a reasonable doubt that the defendant was guilty, the verdict must be sustained.

See also, State v. Horne, 12 Utah 2d 162, 364 P. 2d 109 (1961), for the same rule. This court also has said that before setting aside a jury verdict, "it must appear that the evidence was so inconclusive or unsatisfactory that reasonable minds acting fairly upon it must have entertained reasonable doubt that the defendant committed the crime. State v. Danks, 19 Utah 2d 162, 350 P. 2d 146 (1960), citing State v. Sullivan, 6 Utah 2d 110, 307 P. 2d 212 (1957). A jury verdict is reversed only when, taking the evidence in the light most favorable to the verdict, the "findings are unreasonable" State v. Berchtold, 11 Utah 2d 208, 357 P. 2d 183 (1960). Further, this court has held in State v. Williams, 111 Utah 379, 180 P. 2d 551, 555 (1961)

We are not unmindful of the settled rule that it is the province of the jury to weigh the testimony and determine the facts. Nevertheless, we cannot escape the responsibility of judgment upon whether under the evidence, a jury could, in reason, conclude that the defendant's guilt was proved beyond a reasonable doubt.

Appellant would submit that an examination of the evidence in this case will show that the finding of guilt by the jury was clearly unreasonable in

light of the evidence presented. There was no dispute in the testimony of witnesses that appellant presented the check at a credit union where he had an account and was known. There was no dispute that the appellant the, in from of a credit union officer, endorsed the check and then deposited part of the money in his own account. Taking this evidence in a light most favorable to the State, it is unreasonable to believe that appellant would do what he did knowing the check to be stolen.

Based upon this evidence appellant submits that this Court should reverse the conviction.

CONCLUSION

For the reasons stated above appellant submits that his conviction should be reversed.

Respectfully submitted,

STEPHEN R. McCAUGHEY

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